



BILLING CODE 4810-02P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank And Financial Accounts

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on a renewal, without change, of existing information collection requirements concerning reports of foreign financial accounts and FinCEN Form 114, Report of Foreign Bank and Financial Accounts ("FBAR"). This request for comments is being made pursuant to the Paperwork Reduction Act ("PRA") of 1995.

DATES: Written comments are welcome and must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER] to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2018-0018 and the Office of Management and Budget ("OMB") control number 1506-0009.

• Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2018-0018 and OMB control number 1506-0009.

Please submit comments by one method only. Comments will also be incorporated to FinCEN's retrospective regulatory review process, as mandated by E.O. 12866 and 13563. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act ("BSA"), Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829(b), 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, authorizes the Secretary of the Treasury, among other things, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.¹ Title III of the USA PATRIOT Act of 2001, Pub. L. 107-56, included certain amendments to the anti-money laundering provisions of Title II of the BSA, 31 U.S.C. 5311 et seq., which are intended to aid in the prevention, detection, and prosecution of international money laundering and terrorist financing.

¹ Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56 ("USA PATRIOT Act").

Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer Title II of the BSA has been delegated to the Director of FinCEN. The information collected and retained under the regulation addressed in this notice assist Federal, state, and local law enforcement as well as regulatory authorities in the identification, investigation, and prosecution of money laundering and other matters.

Under 31 U.S.C. 5314, the Secretary is authorized to require any “resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.” The term “foreign financial agency” encompasses the activities found in the statutory definition of “financial agency,”² which means, in pertinent part, “a person acting for a person as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.”³ The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out section 5314.

Pursuant to the authority in section 5314, 31 CFR 1010.350 generally requires each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists, and to provide and report such information specified in a reporting form prescribed under

² 31 U.S.C. 5312(b)(2).

³ See 31 U.S.C. 5312(a)(1), which exempts from the definition of financial agency a person acting for a country, a monetary or financial authority acting as a monetary or financial authority or an international financial institution of which the United States government is a member.

31 U.S.C. 5314. Section 1010.350 provides certain exceptions from reporting. FinCEN Form 114 (the FBAR) is the form used to file the required information. The recordkeeping requirements associated with foreign financial accounts required to be reported under section 1010.350 are set forth in 31 CFR 1010.420. Specifically, filers must retain records of such accounts for a period of 5 years and make the records available for inspection as authorized by law.⁴

In accordance with the requirements of the PRA and its implementing regulations, the following information is presented concerning the information collection below.

Title: Reports of foreign financial accounts and records to be made and retained by persons having financial interests in foreign financial accounts (31 CFR 1010.350, 1010.420) and FinCEN Form 114, Report of Foreign Bank and Financial Accounts.

OMB Control Number: 1506-0009.

Form Number: FinCEN Form 114.

Abstract: Each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. This information will be provided on the FinCEN Form 114. Records of accounts required by §1010.350 to be reported shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law.

⁴ The penalties provided in the BSA apply to both the FBAR reporting and recordkeeping requirement.

Type of Review: Renewal without change to a currently approved information collection.

Affected Public: Individuals, businesses or other for-profit institutions, and non-profit institutions.

Burden:

- Estimated Number of Respondents: 1,090,774.⁵
- Estimated Number of Responses: 1,090,774.
- Estimated Average Annual Burden Per Response: The estimated average burden associated with the recordkeeping requirements in the rules will vary depending on the number of reportable accounts. We estimate that the recordkeeping burden will range from five minutes to sixty minutes, and that the average burden will be 30 minutes. The estimated average burden associated with the reporting requirement (i.e., FBAR form completion) will also vary depending on the number of reportable accounts and whether the filer will be able to take advantage of the exceptions provided in the rule. We estimate that the average reporting burden will range from approximately 15 minutes to 50 minutes and that the average reporting burden will be approximately 30 minutes. The estimated total annual recordkeeping and reporting burden per response will be 1 hour.
- Estimated Total Annual Respondent Burden: 1,090,774 hours (one hour per report).

⁵ The total number of FBARs reported for foreign financial accounts reported for calendar year 2016 is 1,090,774.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 11, 2018.

Jamal El-Hindi,

Deputy Director,

Financial Crimes Enforcement Network.

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